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situated

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MCKESSON MEDICAL-SURGICAL INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN HARRIS, individually and on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL
INC., a Virginia Corporation; and DOES
1-50, inclusive,

Defendant.

Case No. 2:20-CV-01321-JAM-AC

**JOINT STIPULATION TO FURTHER
MODIFY THE INITIAL SCHEDULING
ORDER; ORDER**

Trial Date: June 6, 2022
Complaint Filed: April 3, 2020

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ORDER; ORDER

1 Plaintiff KEVIN HARRIS (“Plaintiff”) and Defendant MCKESSON MEDICAL-
 2 SURGICAL INC. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel
 3 of record, hereby agree and respectfully stipulate as follows:

4 **WHEREAS**, Plaintiff filed his Complaint on April 3, 2020 in Placer County Superior
 5 Court, and Defendant timely removed this matter to this Court on July 1, 2020.

6 **WHEREAS**, on August 24, 2020, the Parties filed their Joint Report of their Rule 26(f)
 7 Conference and Proposed Discovery Plan (Dkt. 3), which included proposed deadlines for Plaintiff to
 8 file a motion for class certification, and for Defendant to oppose such a motion;

9 **WHEREAS**, on August 25, 2020, this Court issued its Initial Scheduling Order (Dkt.
 10 4), however, the Court’s Initial Scheduling Order did not include any deadlines for Class
 11 Certification/De-Certification Motions, nor did it include deadlines for expert disclosures relating to
 12 Class Certification as requested in the Parties’ Joint Report (Dkt. 3).

13 **WHEREAS**, on August 31, 2020, Defendant filed its Objections to the Initial
 14 Scheduling Order (Dkt. 5), requesting that this Court set forth deadlines for Class Certification/De-
 15 Certification as requested in the Parties’ Joint Report.

16 **WHEREAS**, Defendant’s Objections to the Initial Scheduling Order remained
 17 pending, but the Parties’ thereafter propounded and responded to written discovery requests, and met
 18 and conferred to resolve alleged deficiencies in the discovery responses, including serving amended
 19 discovery responses, as well as engaging in efforts to resolve a discovery dispute relating to the scope
 20 of the alleged putative Class.

21 **WHEREAS**, the Parties could not resolve their discovery dispute relating to the scope
 22 of the putative Class, and held an Informal Discovery Conference (“IDC”) before Magistrate Judge
 23 Claire on April 8, 2021. Magistrate Judge Claire determined that Plaintiff was entitled to conduct
 24 discovery based on a broader scope of the Class.

25 **WHEREAS**, during the IDC, Defendant’s counsel raised to Magistrate Judge Claire
 26 the fact that Defendant’s Objections to the Initial Scheduling Order remained pending, to which
 27 Magistrate Judge Claire advised the Parties to file a stipulation to Modify the Scheduling Order to

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incorporate the deadlines set forth in the Parties' initial Joint Report.

WHEREAS, on or about November 4, 2021, the Parties filed a Joint Stipulation and [Proposed] Order to Modify the Initial Scheduling Order to set Class Certification deadlines, but also allow them more time to conduct further discovery and/or prepare a dispositive motion after the Court rules on Class Certification (Dkt. 10).

WHEREAS, on November 5, 2021, the Court issued an Order modifying the Initial Scheduling Order and setting Class Certification deadlines as follows:

- Last Day to Make Expert Witness Disclosures: **2/21/22**
- Last Day to Make Rebuttal Expert Disclosures: **3/21/22**
- Last Day to Complete Discovery Related to Class Certification (except expert discovery): **3/11/22**
- Last Day to Complete Expert Discovery Related to Class Certification: **4/20/22**
- Last Day to Move for/against Class Certification: **4/5/22**
- Opposition to Class Certification Motion(s) by: **4/19/22**
- Repl(ies) to Class Certification Motion(s) by: **4/26/22**
- Hearing on Class Certification Motion(s) on: **5/3/22**
- [Assuming Certification Motion is decided on 5/3/22] Last Day to Complete Remaining Discovery or file any Motion re Discovery: **8/19/22**
- Dispositive Motions and/or Motion to De-Certify Class filed by: **10/4/22**
- Dispositive Motion or Motion to De-Certify Class hearing: **11/15/22**
- Final Pre-Trial Conference: **1/27/23**
- Jury Trial: **3/13/23**

WHEREAS, the Parties have further engaged in additional discovery efforts, but have also agreed to pursue a private mediation in hopes to reach a global resolution of this matter before engaging in further discovery and litigation efforts (*i.e.*, before moving for Class Certification) and have appointed Hon. Ronald M. Sabraw (Ret.) as their mediator. The Parties have reserved June 14, 2022 to mediate with Judge Sabraw, which is after the current deadline to move for Class Certification

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1 under the current Scheduling Order. Accordingly, the Parties hereby stipulate to further modify the
 2 Scheduling Order to allow them the opportunity to mediate this case and potentially reach a resolution
 3 without the need to conduct further discovery and litigation efforts at this time.

4 **WHEREAS**, good cause exists to modify the Court’s scheduling Order as follows:

5 The district court is given broad discretion in supervising the pretrial phase of
 6 litigation...” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and
 7 internal quotation marks omitted). “A schedule may be modified only for good cause and with the
 8 judge’s consent.” Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d
 9 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing
 10 summary judgment motion after pretrial motion cut-off date).

11 To establish “good cause,” parties seeking modification of a scheduling order must
 12 generally show that, even with the exercise of due diligence, they cannot meet the order’s timetable.
 13 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,
 14 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became
 15 apparent that compliance with the scheduling order was not possible). In determining “good cause,”
 16 courts also consider the importance of the requested modification, the potential prejudice in allowing
 17 the modification, and, conversely, whether denial of the requested modification would result in
 18 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving
 19 amendment of pleadings).

20 Here, good cause exists for a modification of the Court’s scheduling order given the
 21 Parties’ agreement to mediate with Judge Sabraw on June 14, 2022. This modification to extend the
 22 Parties’ Class Certification brief schedule and related deadlines would allow the Parties the
 23 opportunity to focus their resources (both time and expense) on settlement as opposed to engaging in
 24 costly class certification discovery and motion work. Consequently, a modification of the scheduling
 25 order would result in a savings of judicial resources in having to hear and decide a class certification
 26 motion. Finally, should the Parties’ mediation be successful, the need for any further motion work or
 27 a trial in this case would be eliminated.

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1 **THEREFORE, upon good cause shown**, the Parties stipulate to continue and/or
2 modify the Scheduling Order as follows:

- 3 • Last Day to Make Expert Witness Disclosures: **8/22/22**
- 4 • Last Day to Make Rebuttal Expert Disclosures: **9/12/22**
- 5 • Last Day to Complete Discovery Related to Class Certification (except expert
6 discovery): **9/5/22**
- 7 • Last Day to Complete Expert Discovery Related to Class Certification: **9/16/22**
- 8 • Last Day to Move for/against Class Certification: **10/7/22**
- 9 • Opposition to Class Certification Motion(s) by: **10/21/22**
- 10 • Repl(ies) to Class Certification Motion(s) by: **10/28/22**
- 11 • Hearing on Class Certification Motion(s) on: **11/2/22**
- 12 • [Assuming Certification Motion is decided on 11/2/22] Last Day to Complete
13 Remaining Discovery or file any Motion re Discovery: **1/23/23**
- 14 • Dispositive Motions and/or Motion to De-Certify Class filed by: **3/3/23**
- 15 • Dispositive Motion or Motion to De-Certify Class hearing: **4/11/23**
- 16 • Final Pre-Trial Conference: **6/26/23**
- 17 • Jury Trial: **8/10/23**

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20 **IT IS SO STIPULATED.**
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1 Dated: February 14, 2022

JAMES HAWKINS APLC

2
3 /s/ Christina M. Lucio (as approved on 2/11/22)

4 JAMES R. HAWKINS
5 CHRISTINA M. LUCIO
6 Attorney for Plaintiff
7 KEVIN HARRIS

8 Dated: February 14, 2022

LITTLER MENDELSON P.C.

9
10 /s/ Nathaniel H. Jenkins

11 TANJA L. DARROW
12 SIMERDIP KHANGURA
13 NATHANIEL H. JENKINS
14 Attorneys for Defendant
15 MCKESSON MEDICAL-SURGICAL INC.
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ORDER

Upon good cause shown, the Court Orders the Scheduling Order to be modified as follows:

- Last Day to Make Expert Witness Disclosures: **8/22/22**
- Last Day to Make Rebuttal Expert Disclosures: **9/12/22**
- Last Day to Complete Discovery Related to Class Certification (except expert discovery): **9/5/22**
- Last Day to Complete Expert Discovery Related to Class Certification: **9/16/22**
- Last Day to Move for/against Class Certification: **10/7/22**
- Opposition to Class Certification Motion(s) by: **10/21/22**
- Repl(ies) to Class Certification Motion(s) by: **10/28/22**
- Hearing on Class Certification Motion(s) on: **11/2/22**
- [Assuming Certification Motion is decided on 11/2/22] Last Day to Complete Remaining Discovery or file any Motion re Discovery: **1/23/23**
- Dispositive Motions and/or Motion to De-Certify Class filed by: **3/3/23**
- Dispositive Motion or Motion to De-Certify Class hearing: **5/9/23 at 1:30 PM**
- Final Pre-Trial Conference: **6/23/23 at 11:00 AM**
- Jury Trial: **8/7/23 at 9:00 AM**

IT IS SO ORDERED.

Dated: February 14, 2022

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

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